



**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TE/GE: EO Examination

1100 Commerce

Dallas, Texas 75242

501.03-00

Date: May 26, 2010

Release Number: **201035028**

Release Date: 9/3/10

LEGEND

ORG = Organization name

XX = Date Address = address

ORG

ADDRESS

Employer Identification Number:

Person to Contact/ID Number:

Contact Numbers:

Voice:

Fax:

**LAST DATE FOR FILING A PETITION
WITH THE TAX COURT: August 24, 20XX**

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear

This is a Final Adverse Determination Letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c)(3) of the code is hereby revoked effective January 1, 20XX. You have agreed to this adverse determination by signing Form 6018.

Our adverse determination was made for the following reasons:

Internal Revenue Code Section 6001 requires organizations exempt from tax to keep such records and render such statements as are required by such rules and regulations as the Secretary may prescribe. Treasury Regulations section 1.6033-2 (h)(2) requires organizations exempt from tax to submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into the organization's exempt status.

Your organization is no longer operating. You failed to keep the required records and you did not file annual information returns.

You failed to meet the requirements of IRC section 501(c)(3) and Treas. Reg. section 1.501 (c)(3) -1(d) in that you failed to establish that you were operated exclusively for an exempt purpose.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code. You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending December 31, 20XX, and for all years thereafter.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit of declaratory judgment in the United States Tax Court, the United States Claims Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. You may write to the Tax Court at the following address:

You also have the right to contact the office of the Taxpayer Advocate. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate office located nearest you by calling (515) 564-6888 or by writing to:

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations or extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate, can, however, see that a tax matter, that may not have been resolved through normal channels, gets prompt and proper handling.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

If you have any questions in regards to this matter please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely yours,

Nanette M. Downing
Director, EO Examinations



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
MC 4926 DSM TEGE:7935
210 Walnut Street
Des Moines, Iowa 50309

November 10, 2009

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Sunita Lough
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

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| Form 886A | Department of the Treasury - Internal Revenue Service Explanation of Items | Schedule No. or Exhibit |
| Name of Taxpayer ORG (ORG) | | Year/Period Ended 20XX |

LEGEND

ORG = Organization name XX = Date City = city State = state
 DIR - Dir CP = VP County = county CO-1 & CO-2 = 1st & 2nd COMPANIES

Issue:

Does ORG (ORG) with little to any activities, along with noncompliance of IRC 6001 for maintaining adequate records as the Service prescribes, and noncompliance with IRC 6033 requirements to file an annual information return, qualify for exemption under Section 501(c) (3) of the Internal Revenue Code?

Facts:

The Organization began its existence on April 11, 20XX. ORG operated during April – September 20XX for the spring cleanup of the ditches and highways/waterways, and just before the fall cleanup of the highways/waterways.

The Articles of Incorporation were filed with the State of State, along with dissolution clause contained in the fourth paragraph of the Articles of Incorporation filed this same date. The Organization did not receive a determination letter, as their gross receipts were less than \$ where they were not required to file the Form 1023, Application for Exemption.

The purpose of ORG was two-fold: 1) to raise awareness of the need to clean, and keep clean the nations highways; and 2) to organize volunteer efforts to clean local and national roadways. ORG operated for approximately the first 90 days the CO-1 Checking Account (Acct. #) in City, State, was opened. The account closed on September 19, 20XX.

The organization did not file a Form 990 return. They would have been required to file a Form 990-N during 20XX.

ORG operated with no formalized board, or any minutes of meeting. On April 21, 20XX, the directors of ORG waived the notice of first meeting of the board of directors of ORG and consent to the holding of said meeting on April 25, 20XX. The meeting never took place. A mission statement was written in their proposed bylaws. It primarily had two officers: husband and wife, DIR as President/Executive Director, and VP as Vice President/Assistant Director of ORG.

A search for the State Secretary of State's website shows an Administrative Dissolution with the state, occurred on August 6, 20XX for failure to file the biannual report.

On August 11, 20XX the IRS sent a letter to the Organization with an Information Document Request (IDR # 001). The letter advised of an examination and the requested records to have available during the scheduled appointment on September 14, 20XX.

No bank statements were maintained for the five months during 20XX that the sole checking

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| ORG (ORG) | | 20XX |

account was opened. There was no check register, no deposit slips, or copies of any checks maintained by ORG. The bank statements for CO-1 Checking Account (Acct. #) for months: April – September 20XX timeframe were destroyed by the officers. The checking account was closed during September 20XX. There were little to any records made available to the examiner during the examination. The Organization did not keep any of the invoices, or paid receipts, for items purchased or rented during the spring cleanup season. Items purchased with revenues received during 20XX included supplies for cleaning the highways, with rental of a large hot cocoa and popcorn machine for the “Grand Opening/Food Drive Fundraiser.... Spring 20XX Kick-Off Cleanup” event held on April 26, 20XX.

There were very few receipts kept from the donations received. The officer states there were out of pocket costs paid by the DIR’s, however, this could not be substantiated at any time during the examination.

There were approximately 99-101 statements, primarily mailed to individual business contributors. As previously stated, only 4 existing statements that were provided to the agent to substantiate those sent to contributors for recordation of their membership dues paid. All other hard copies of statements were recycled (destroyed). The contributors were mainly from County, with a few from the surrounding County and County Counties. There was only one out of state contributor.

ORG maintained no recordation of the compiled list of contributors, other than a handful that were reported on the (February 20XX) CO-2 newsletter. The Organization’s laptop crashed. They lost most of their information regarding the contributions and amounts donated from individuals to further substantiate the revenues and expenses.

Since the end of 20XX, this Organization had a website account called “Mid-America”, where it stated that ORG was a 501(c) (3) organization, and did solicitation of membership dues as donations. As a result of the examination, this was brought to the attention of the officer. The officer states they have now closed down their “website” website account that was last used on 02-22-20XX, up until closing out the account on 08-26-XX, where examiner verified closing down of website during discussions with officer on 09-04-XX.

The website previously stated that “We are 501c3. To date we have almost 12 miles of State Highways [that’s over 20 miles of ditch] here in County, and we are applying for more roadways currently. ... We opted to sell memberships to our organization as a way to raise funds. For \$ a year our members get a monthly newsletter [CO-2] geared towards information and education, and also to let our members know where the money is going. We use our membership fees [our numbers are increasingly very steadily everyday’ to advertise for, and organize volunteer efforts to remove litter from those places.” The officer also used a personal email address on the webpage, which is still in existence today.

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| ORG (ORG) | | 20XX |

All prior written contracts for the 20XX spring and fall cleanup seasons could not be found, which were held between the City of City, State and/or County and ORG regarding their loosely structured agreement to clean the first 5.7 miles of ditches on Highway from City to the smaller town of City; 5 miles of the old Highway (Veterans' Field); informal agreement to clean the city's local Park; and a stretch of Hwy approximately 2-2.5 miles of an interstate south of City.

On repeated occasions the examiner solicited the Organization to provide photocopies of monthly bank statements between April – September 20XX, along with front and back sides of all cancelled checks, and copies of deposit tickets/transfer slips. However, the Organization is noncooperative in providing the necessary documents, while ORG operated in existence for a few months: April – September 20XX timeframe.

Law:

IRC §501(a) provides an exemption from federal income tax for organizations described in IRC §501(c)(3).

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that IRC §501(c)(3) requires an organization to be both “organized” and “operated” exclusively for one or more IRC §501(c)(3) purposes. If the organization fails either the organizational test or the operational test, it is not exempt. The organizational test concerns the organization's articles of organization or comparable governing document.

The operational test concerns the organization's activities. A deficiency in an organization's governing document cannot be cured by the organization's actual operations. Likewise, an organization whose activities are not within the statute will not qualify for exemption by virtue of a well-written charter. Section 1.501(c)(3)-1(b)(1)(iv) of the Income Tax Regulations.

Section 1.501(c)(3)-1(b)(4) of the Income Tax Regulations states that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose(s). An organization's assets will be considered dedicated to an exempt purpose, if upon dissolution, such assets would, by reasons of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations states that an organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities which accomplish one or more such exempt purposes specified in IRC §501(c)(3).

IRC Section 6001 provides that every person liable for any tax imposed by the IRC, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

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| ORG (ORG) | | 20XX |

Treas. Reg. Section 1.6033-1(h)(2) provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and IRC Section 6033.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of IRC Section 6033 and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of exempt status.

In accordance with the above cited provisions of the Code and regulations under IRC Sections 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

Government's Position:

Generally, organizations exempt under IRC §501(c)(3) engage in activities that directly furthers the charitable or other purposes mentioned in that subparagraph. These activities must serve "exclusively" exempt purposes.

Section 1.501(c)(3)-1(a)(1) of the regulations states that if an organization fails to meet either the organizational or the operational test, it is not exempt.

Section 1.501(c)(3)-1(d)(1)(ii) provides in part that an organization must be engaged in "public" activities. Their revenue and expenses measure public activities for an organization under IRC §501(c)(3). To satisfy the "operational test," the organization's resources must be devoted to purposes that qualify as exclusively charitable within the meaning of IRC §501(c)(3) and the applicable regulations.

These identifiable activities must be evident and justifiable on their information return (e.g. Form 990) to satisfy the operational test. In addition to these activities being identifiable, they must be supported with administrative and accounting records (i.e. revenue and expenses).

Since the 990 was not a required form for this organization, they were still required to file an online Form 990-N, regarding their confirmation as a nonprofit, an exempt organization recognized by the Service.

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As stated above, to determine if ORG was exempt, your Organization does not meet the requirements under IRC 6001 for maintaining adequate record as the Service prescribes, and IRC 6033 requirements to file an annual information return.

Your appeal rights are contained in Publication 892.

Taxpayer's Position:

During a phone conversation held on 09-22-20XX with the agent and taxpayer, it was indicated that they will be agreeing to the revocation.

Conclusion:

In determining whether an organization meets the operational test under IRC §501(c)(3), the issue is whether the particular activity(ies) undertaken by the organization is appropriately in furtherance of the organization's exempt purpose(s). The regulations provide that a charitable organization must be engaged in "public activities." Revenue and expenses measure activities. To satisfy the "operational test," resources (revenue and expenses) must be devoted to purposes that qualify within the meaning of IRC §501(c)(3). According, for ORG to continue to satisfy the "operational test" under IRC §501(c)(3), activities must be identifiable on their information return and supported with administrative and accounting records.

The Service finds little to any current activities, as ORG is no longer operating. There were very little records provided to the examiner. Furthermore, the Organization has been uncooperative in turning over necessary bank records that include copies of front and back sides of checks, deposit/transfer slips, and the monthly bank statements from April – July 20XX to conclude further on the operational test. ORG is found to not meet the operational test of the dual component necessary in meeting both the organizational/operational tests for a 501(c)(3) organization to meet exempt status.

It is the IRS's position that the Organization failed to meet the reporting requirements under Sections 6001 and 6033 to be recognized as exempt from federal income tax under IRC Section 501(c)(3). During 20XX, ORG did not file the annual information return, Form 990-N, as was required to determine if it was exempt. Accordingly, the organization's exempt status is revoked effective January 1, 20XX. No 1120 form is required for this organization.